

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 847

Introduced by Council, 11.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to courts; to amend sections 25-2720.01,
2 25-2803, and 25-2804, Reissue Revised Statutes of
3 Nebraska; to change Small Claims Court powers relating to
4 judgments and orders and provide for use of attorneys as
5 prescribed; to harmonize provisions; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-2720.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 25-2720.01 The county court, including the Small Claims
4 Court and the county court when sitting as a juvenile court, shall
5 have the power to set aside default judgments and to vacate or
6 modify its own judgments or orders during or after the term at
7 which such judgments or orders were made in the same manner as
8 provided for actions filed in the district court.

9 Sec. 2. Section 25-2803, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-2803 (1) Parties in the Small Claims Court may
12 be individuals, partnerships, limited liability companies,
13 corporations, unions, associations, or any other kind of
14 organization or entity.

15 (2) No party shall be represented by an attorney in the
16 Small Claims Court except as provided in ~~section~~ sections 25-2804
17 and 25-2805.

18 (3) An individual shall represent himself or herself in
19 the Small Claims Court. A partnership shall be represented by a
20 partner or one of its employees. A limited liability company shall
21 be represented by a member, a manager, or one of its employees.
22 A union shall be represented by a union member or union employee.
23 A corporation shall be represented by one of its employees. An
24 association shall be represented by one of its members or by an
25 employee of the association. Any other kind of organization or

1 entity shall be represented by one of its members or employees.

2 (4) Only a party, natural or otherwise, who has been a
3 party to the transaction with the defendant for which the claim is
4 brought may file and prosecute a claim in the Small Claims Court.

5 (5) No party may file an assigned claim in the Small
6 Claims Court.

7 (6) No party shall file more than two claims within any
8 calendar week nor more than ten claims in any calendar year in
9 the Small Claims Court. This subsection shall not apply to actions
10 brought pursuant to section 25-21,194.

11 (7) Notwithstanding any other provision of this section,
12 a personal representative of a decedent's estate, a guardian, or a
13 conservator may be a party in the Small Claims Court.

14 Sec. 3. Section 25-2804, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-2804 (1) Actions in the Small Claims Court shall be
17 commenced by the filing of a claim, personally or by mail, by
18 the plaintiff on a form provided by the clerk of a county court.
19 The claim form shall be executed by the plaintiff in the presence
20 of a judge, a clerk or deputy or assistant clerk of a county
21 court, or a notary public or other person authorized by law to
22 take acknowledgments. If not filed in person, the claim form and
23 appropriate fees shall be mailed by the plaintiff to the court of
24 proper jurisdiction.

25 (2) At the time of the filing of the claim, the plaintiff

1 shall pay a fee of six dollars and twenty-five cents to the clerk.
2 One dollar and twenty-five cents of such fee shall be remitted to
3 the State Treasurer for credit to the Nebraska Retirement Fund for
4 Judges.

5 (3) Upon filing of a claim in the Small Claims Court,
6 the court shall set a time for hearing and shall cause notice to
7 be served upon the defendant. Notice shall be served not less than
8 five days before the time set for hearing. Notice shall consist
9 of a copy of the complaint and a summons directing the defendant
10 to appear at the time set for hearing and informing the defendant
11 that if he or she fails to appear, judgment will be entered against
12 him or her. Notice shall be served in the manner provided for
13 service of a summons in a civil action. If the notice is to be
14 served by certified mail, the clerk shall provide the plaintiff
15 with written instructions, prepared and provided by the State
16 Court Administrator, regarding the proper procedure for service by
17 certified mail. The cost of service shall be paid by the plaintiff,
18 but such cost and filing fee shall be added to any judgment given
19 the plaintiff.

20 (4) The defendant may file a setoff or counterclaim. Any
21 setoff or counterclaim shall be filed and a copy delivered to
22 the plaintiff at least two days prior to the time of trial. If
23 the setoff or counterclaim exceeds the jurisdictional limits of
24 the Small Claims Court as established pursuant to section 25-2802,
25 the court shall cause the entire matter to be transferred to the

1 regular county court docket and set for trial.

2 (5) No prejudgment actions for attachment, garnishment,
3 replevin, or other provisional remedy may be filed in the Small
4 Claims Court.

5 (6) All forms required by this section shall be
6 prescribed by the Supreme Court. The claim form shall provide for
7 the names and addresses of the plaintiff and defendant, a concise
8 statement of the nature, amount, and time and place of accruing of
9 the claim, and an acknowledgment for use by the person in whose
10 presence the claim form is executed and shall also contain a brief
11 explanation of the Small Claims Court procedure and methods of
12 appeal therefrom.

13 ~~(7) Judgments rendered against a defendant in his or her~~
14 ~~absence may not be set aside but may only be appealed as governed~~
15 ~~by section 25-2807.~~

16 (7) For a default judgment rendered by a Small Claims
17 Court (a) the default judgment may be appealed as provided in
18 section 25-2807, (b) if a motion for a new trial, by the procedure
19 provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten
20 days or less after entry of the default judgment, the court may act
21 upon the motion without a hearing, or (c) if more than ten days
22 have passed since the entry of the default judgment, the court may
23 set aside, vacate, or modify the default judgment as provided in
24 section 25-2720.01. Parties may be represented by attorneys for the
25 purpose of filing a motion for a new trial or to set aside, vacate,

1 or modify a default judgment.

2 Sec. 4. Original sections 25-2720.01, 25-2803, and

3 25-2804, Reissue Revised Statutes of Nebraska, are repealed.